(16)

FILED
OCT 13 1924
WM. R. STANSB
CLE

IN THE

Supreme Court of the United States

No. 491. October Term, 1924.

Andrew W. Mellon, Secretary of the Treasury, *et al., Appellants,*

vs.

The Orinoco Iron Company, *Appellee.*

REPLY BRIEF FOR APPELLEE, UPON MOTION TO DISMISS OR AFFIRM.

William R. Harr,
Edward S. Duvall,
Attorneys for Appellee.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

No. 491. October Term, 1924.

Andrew W. Mellon, Secretary of the Treasury, *et al., Appellants,*

vs.

The Orinoco Iron Company, *Appellee.*

REPLY BRIEF FOR APPELLEE, UPON MOTION TO DISMISS OR AFFIRM.

In opposing appellee's motion to dismiss or affirm, the Solicitor General (on page 5 of his brief) recognizes that:

> "as between the Orinoco Company, Limited, and the Orinoco Iron Company it has been finally determined that the equitable owner of this fund is the Orinoco Iron Company," appellee here.

The Solicitor General also recognizes that under the Act of February 27, 1896, relating to the distribution of moneys received from foreign governments in trust for citizens of the United States, the duty of the Secre-

tary of the Treasury to pay, upon the certificates issued by the Secretary of State, is a ministerial one which can be enforced by mandamus. (Brief, page 8.)

These two concessions manifestly put this case on all fours with *Houston* v. *Ormes,* 252 U. S. 469, which the Solicitor General endeavors to distinguish. To contend that the ministerial duty to pay, imposed by said statute upon the Secretary of the Treasury, can not be controlled by a court of competent jurisdiction in the interest of one having a superior equitable claim to the fund, is simply to ignore *Houston* v. *Ormes,* for that is what that case expressly decided.

The fact that, under the Act of February 27, 1896, a certificate of the Secretary of State designating the beneficiary is required, is immaterial here, *because the necessary certificates have been issued.* These established the legal right of the receiver of the Orinoco Company, Limited, to demand the moneys in the Treasury, but the final decree of the Supreme Court of the District of Columbia in this case, establishing appellee's equitable right thereto as against said receiver and the company he represented, operated to transfer the title to said moneys to the Iron Company, *of which fact the Secretary of the Treasury was bound to take notice under the decision of this court in the Borcherling Case* (185 U. S. 223), so that the decree, so far as it enjoins the Secretary of the Treasury from paying the money over to the receiver appointed by the court in this case merely enjoins him to do what it is his plain duty to do under the circumstances. And *Houston* v. *Ormes* is conclusive as to the jurisdiction of the Supreme Court of the District of Columbia to enforce appellee's equitable claim of title to said

moneys by a mandatory writ of injunction, such as we have here.

The certificates (two in number) issued by the Secretary of State are set forth in the answer filed on behalf of appellants (Rec., 57-58). They are directed to the Secretary of the Treasury and request him to cause warrants to be issued in favor of LeCrone, receiver of the Orinoco Company, Limited, for certain amounts. aggregating $56,250, which amounts, the Secretary of State says, "I hereby certify to be due and payable out of the following-named trust fund: Claims of the Orinoco Corporation against Venezuela." In view of these certificates, the situation, in law, is exactly the same as if, by direct mandate of Congress, the Secretary of the Treasury had been directed to pay LeCrone said amount of money out of said fund. Nothing remains but the ministerial act of payment, and the legal situation is therefore no different from that which existed in *Houston* v. *Ormes.*

A similar situation also existed in the *Borcherling Case.* Notwithstanding the Act of Congress involved in that case expressly provided that any balance found by the Secretary of the Treasury to be due Price should be paid to *Price or his heirs,* this Court, in affirming the judgment of the Court of Claims, held that the Secretary of the Treasury was required to take notice of the fact that the right to said money had been transferred by operation of law to Borcherling, the New Jersey receiver, saying (185 U. S. 232-233):

> "As to the contention that the debt due from the United States to Price could not be transferred from Price to the claimant by operation of the

> laws of New Jersey, nor by any decree that the courts of New Jersey, operating under such laws, could make, it is sufficient to say that this court has held otherwise," citing *Vaughan* v. *Northrup*, 15 Pet. 1, and *Price* v. *Forrest*, 173 U. S. 410.

So that the Secretary of the Treasury would pay the moneys here in question to any other person than the receiver appointed by the final decree in this cause *at his peril.*

At the close of his brief (p. 9), the Solicitor General makes this statement as if it were a controlling proposition (italics his):

> "In the instant case, a discretion was given to the Secretary of State, *and no duty rested upon the Secretary of the Treasury until the Secretary of State exercised that discretion and the former was bound by the decision of the latter.*"

The correctness of this proposition may be conceded, but it does not dispose of *Houston* v. *Ormes.* In that case, too, the Secretary of the Treasury was bound by the mandate of Congress to pay Susan Sanders so much money, until the Supreme Court of the District of Columbia, in the exercise of its equitable powers, decided that some one else had a superior claim to a portion thereof.

Obviously a person named as beneficiary by the Secretary of State, under the Act of February 27, 1896, can have no greater right to receive payment of said moneys, without interference by the Supreme Court of the District of Columbia, in the exercise of its equitable powers, than a person specifically designated as payee by Congress itself in an appropriation Act, as was the case in *Houston* v. *Ormes.*

The decree in this case in no wise undertakes to override the decision of the Secretary of State, but merely holds that the amount of the Orinoco award which has been certified by the Secretary of State to be paid to the receiver of the Orinoco Company, Limited, *is subject to a trust in favor of the Orinoco Iron Company.* Thus the decree, after declaring that the Iron Company had established its claim of equitable title to said money, states that "said defendants, the Orinoco Company, Limited, and its said receiver, have no valid right, title or interest therein or thereto, *except as trustees for the plaintiff.*" (Decree, Rec., 60-61, par. 2.)

Manifestly, there is nothing in the Act of February 27, 1896, which prevents the courts of the District of Columbia from controlling the payment by the Secretary of the Treasury to a beneficiary designated by the Secretary of State, by declaring the beneficiary designated by the Secretary of State trustee for the person found equitably entitled thereto.

The confusion of thought in the brief of the Solicitor General about this case is apparent from the following paragraph thereof (p. 6, italics his):

> "If the power of the Secretary of State to determine *as between the United States and any claimant* the form of payment can be thus disregarded, then, as the dissenting opinion indicates, any claimant, without awaiting the action of the Secretary of State, could ask for a mandamus to compel the Treasury Department to pay a sum, even though the United States, as in the instant case, had made the collection from a foreign nation in behalf of some other party. Thus the United States would not only be dragged into all kinds of litigation but the method of paying out such Treasury trust funds would be embarrassed

by injunctions and mandamuses *and the determinative power of the Secretary of State would be nullified.*"

This is tantamount to saying that, if the mere ministerial duty of payment conferred upon the Secretary of the Treasury, by the Act of February 27, 1896, can be controlled by the courts of this District, in the interest of one having a superior equitable title to the fund, *after* the beneficiary thereof has been designated by the Secretary of State, the result would be to authorize said courts to compel payment by the Secretary of the Treasury *before* the Secretary of State had exercised "the determinative power" conferred upon him by said statute. This is a manifest *non sequitur.*

In view of the decisions of this Court in *Houston* v. *Ormes* and *United States* v. *Borcherling,* it would be very strange if the Supreme Court of this District could not make its decree transferring title to the moneys in the Treasury to the Iron Company effective by requiring payment thereof by the Secretary of the Treasury (its custodian merely) to the receiver appointed by its said decree, but was limited, as Judge Smith suggested, to enjoining LeCrone from receiving the same, leaving the Secretary of the Treasury free to pay the same if LeCrone saw fit to violate the decree.

We submit, therefore, that the final disposition of this case should not be delayed, but that the appeal should be dismissed, or the judgment of the lower court affirmed, without further argument.

WILLIAM R. HARR,
EDWARD S. DUVALL,
Attorneys for Appellee.